

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2712 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOTIBEN W/OF NANDLAL ODD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/07/96

ORAL JUDGEMENT

Petitioner Motiben wife of nandlal Odd has challenged the legality and validity of the order of her detention dated 23.3.1996 passed under section 3(1) of the Prevention of ANti Social Activities Act (hereinafter referred to as the "PASA Act") by the Police Commissioner, Rajkot City, by filing this petition under Article 226 of the Constitution of India.

In the grounds of detention, supplied to the detenu, the detaining authority has placed reliance on the 8 pending trial cases registered against the detenu under the provisions of Bombay Prohibition Act, and the statements of three witnesses for the alleged incidents dated 5.10.95, 1.11.95 and 3.3.1996, wherein the allegations against the detenu are made with regard to the anti social and naferious activities of the detenu. After considering these materials, the detaining authority has recorded the finding that the detenu is a bootlegger within the meaning of section 2(b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed which is under challenge in the present petition.

Miss Subhadraben Patel learned advocate appearing for the petitioner has submitted that the petition is required to be allowed on the ground that the detaining authority has not supplied the bail order granted by the concerned court to the detenu in the offence being Criminal Case No. 358/1993. In absence of this vital document, the petition was not able to make an effective representation to the authority and, therefore, the continuous detention is illegal. The Supreme Court, in the case of M. Ahmedkutty vs. Union of India & Anr. reported in (1990)2 SCC p. 1 has held that the bail application and the bail order contitutes vital material and non-consideration of by the detaining authority or non-supply of copies thereof, to detenu would be violative of Article 23(5) of the Constitution of India and the continued detention will be illegal.

In the instant case, admittedly as can be seen from the index of the documents supplied to the detenu, the bail order is not supplied with respect to Criminal Case No. 358/1993. In view of this, the petition is required to be allowed only on this short contention that by not supplying the bail order to the detenu the rights guaranteed under Article 22(5) of the Consitution of India of making an effective representation is violates and, therefore, continued detention of the detenu vitiates.

In the result, this petition is allowed. The impugned order of detention dated 23.3.1996 is quashed and set aside. The detenu Smt. Motiben wife of Nandlal Odd is directed to be set at liberty forthwith, if her detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.
